137-542

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. ~~378.~~ 84

EDWIN A. MERRITT, COLLECTOR OF THE PORT OF NEW YORK, PLAINTIFF IN ERROR,

VS.

DONALD CAMERON AND DONALD E. CAMERON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED AUGUST 25, 1887.

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1 UNITED STATES OF AMERICA, *ss.*

The President of the United States to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the records and proceedings and also in the rendition of the judgment of a plea which is in the said circuit court before you, between Donald Cameron and Donald E. Cameron, plaintiffs, and Edwin A. Merritt, defendant, a manifest error hath happened, to the great damage of the said Edwin A. Merritt, as by his complaint appears; we being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October, eighteen hundred and eighty-seven, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done thereon to correct that error what of right and according to the laws and customs of the United States should be done.

Witness, the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 18th day of February, in the year of our Lord one thousand eight hundred and eighty-seven.

TIMOTHY GRIFFITH, *Clerk.*

The foregoing writ is hereby allowed.

WM. J. WALLACE.

2 (Indorsed:) 6935. U. S. Supreme Court. Edwin A. Merritt, plaintiff in error, against Donald Cameron & ano., defendants in error. Writ of error. Due service of a copy of the within writ of error is hereby admitted this 18 day of 1887. Stanley & Clarke, attorneys for defendants in error.

(Stamp:) U. S. circuit court. Filed Feb. 18, 1887. Timothy Griffith, clerk.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

3 I, Timothy Griffith, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages, numbered from four to forty-three inclusive, contain a true and complete transcript of the records and proceedings had in said court in the case of Edwin A. Merritt, plaintiff in error, against Donald Cameron and Donald E. Cameron, defendants in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the city of New York, in the southern district of New York, in the second circuit, this fifth day of August, in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the United States the one hundred and twelfth.

[SEAL.] TIMOTHY GRIFFITH, *Clerk.*

4 *Summons No.* 1.

Superior court of the city of New York.

DONALD CAMERON AND DONALD S. CAMERON,
plaintiffs,
against
EDWIN A. MERRITT, DEFENDANT.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiffs' attorneys within twenty days after the service of this summons, exclusive of the day of service, and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded *for the relief demanded* in the complaint.

Dated New York, April 19, 1881.

STANLEY, BROWN, CLARKE,
Plaintiffs' Attorneys,
P. O. and Office, No. 195 *B'way, New York City.*

5 (Indorsed:) No. 1. New York superior court. Donald Cameron & 'no., plaintiffs, against Edwin A. Merritt, defendant. Summons. Stanley, Brown and Clarke, pl'ffs' att'ys, 195 B'way, New York City. Summons this April 19, '81.

6 1. *Notice of appearance and demand.*

N. Y. superior court.

DONALD CAMERON, ANO.,
versus
EDWIN A. MERRITT.

You will please take notice that I am retained by, and appear as attorney for, the defendant in this action, and demand service of a bill of particulars of the plaintiffs' claim herein and a copy of the complaint and all papers in this action upon me at my office in the United States court and post-office building in the city of New York.

Yours,

STEWART L. WOODFORD,
United States Attorney, Attorney for Defendant.

New York, May 5, 1881.

STANLEY, BROWN AND CLARKE,
Attorneys for Plaintiffs.

7 (Indorsed:) N. Y. superior court. Donald Cameron, ano., versus Edwin A. Merritt. Notice of appearance. Stewart L. Woodford, U. S. attorney, attorney for def't. To Stanley, Browne and Clarke, pl'ffs' att'ys, 156 and 158 B'way. Rec'd May 5, 1881.

8 The President of the United States of America to the judges of the supreme court of the city of New York, greeting:

[L. S.] We, for certain reasons, being desirous that our circuit court of the United States for the southern district of New York, in the second circuit, shall be certified of a certain cause commenced before you against Edwin A. Merritt, defendant, by Donald Cameron, and & ano., plaintiffs, do therefore command you that the record and proceedings in the said cause you distinctly and openly send to the said circuit court, at the city of New York, on the 21st day of May, 1881, as fully and amply as the same are remaining before you, by whatever names the said parties may be called therein, together with this writ, that our said court may cause to be further done thereupon what of right ought to be done.

Witness, Morrison R. Waite, esquire, Chief-Justice of the Supreme Court of the United States, the 18 day of May, in the year one thousand eight hundred and eighty-one.

JOSEPH H. DUEL,
Clerk.

STEWART L. WOODFORD,
U. S. Attorney, Attorney for Defendant.

9 (Indorsed:) 6935. Ent'd. U. S. circuit court. Donald Cameron & 'no., vs. Edwin A. Merrit. Copy certiorari. Stewart L. Woodford, U. S. attorney, attorney for defend't. Take notice that the within is a copy of a certiorari this day issued out of the circuit court of the United States for the southern district of New York. New York, May 8, 1881. Yours, Stewart L. Woodford, att'y for def't. To Stanley, Browne & Clarke, plff's att'ys. Rec'd May 18, '81.

10 *Complaint.*

Circuit court of the United States for the southern district of New York.

DONALD CAMERON AND DONALD S. CAMERON,
plaintiffs,
vs.
EDWIN A. MERRITT, DEFENDANT.

Plaintiffs complain—

1st. That defendant was, during the times hereinafter named, collector of customs of the United States at the port of New York.

2d. That plaintiffs were, during said times, partners in trade under the firm name of Donald Cameron & Co., and as such duly imported and entered at the port of New York the goods described in the bill of particulars annexed.

3d. The defendant, as such collector, exacted from plaintiffs as and for duties thereon, viz: Sixty-one thousand five hundred and thirty-eight $\frac{51}{100}$ dollars.

11 4th. That by the laws of the United States the true duty upon said goods was fifty-five thousand two hundred and seventy-seven

& $\frac{31}{100}$ dollars, but plaintiffs, in order to obtain said goods, were compelled to pay the sum of six thousand two hundred and sixty-one $\frac{20}{100}$ dollars in gold coin of the United States in excess of the amount required by law.

5th. That plaintiffs filed with said defendant due and timely protests, in writing, upon each entry of said goods against his decision exacting such duty, setting forth distinctly and specifically the grounds of objection thereto, and also as above stated.

6th. That plaintiffs made due and timely appeals in each case to the Secretary of the Treasury, who has affirmed the decision of defendant as to certain of said entries, and as to the rest of said entries has
12 neglected to answer said appeals, and more than ninety days had elapsed since said unanswered appeals when this action was commenced.

7th. That the bill of particulars hereto annexed, states for each importation separately the date of entry at the custom-house, of the payment of duty in excess, of the filing of the said protests, of the appeal to the Secretary of the Treasury, and of his decision thereon, together with the other particulars required by law, and is made a part hereof.

8th. That said sum, so exacted, as aforesaid, has never been repaid to plaintiffs, and is still due and owing to them.

Wherefore, plaintiffs demand judgment against defendant for six thousand two hundred and sixty-one $\frac{20}{100}$ dollars in United States gold coin, with interest on the several sums named in the bill of particulars,
13 from the several dates of payment as appear thereby, together with the costs and disbursements of this action.

STANLEY, BROWN & CLARKE,
Attorneys for Plaintiffs.

STATE OF NEW YORK,
City and County of New York, ss:

of the plaintiffs being duly sworn, says: He has read the foregoing complaint; that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

Signed and sworn to before me, 188–.

(Endorsed:) United States circuit court, Donald Cameron & ano. ag't Edwin A. Merritt. Complaint. Due service of a copy hereof is
14 hereby acknowledged, this 21st day of May, 1881.

S. L. WOODFORD,
U. S. Att'y, Att'y for Def't.

STANLEY, BROWN & CLARKE,
Pl'ffs Attorney, 158 *Broadway, New York City.*

14½ *Bill of particulars.*

[Name of importer (for all the importations): Donald Cameron & Co. Description of goods: Sugar. Whence imported: Demerara.]

Name of vessel.	Date of invoice.	Date of entry at custom-house.	Amount of duty illegally exacted.	Date of payment of duties in excess.	filed.	Date of appeal to Secretary of the Treasury.	Date of Secretary's decision.
	1880.	1880.		1880.		1880.	1880.
Restless	June 26	July 26	1,345.56	Sept. 10	Sept. 15	Sept. 15	Jan. 22
Una	Aug. 7	Sept. 13	426.22	" 24	Oct. 14	Oct. 14	" 25
Riberia	July 29	Aug. 23	1,171.23	" 6	" 13	" 13	" 25
Sagitta	Sept. 9	Sept. 30	2,157.96	Oct. 12	Dec. 10	Dec. 10	Mch. 17
Fraternedade	" 27	Nov. 1	1,163.23	Nov. 23	" 10	" 10	" 17
			6,261.20				
			1,345.56				
			4,915.64				

All except Restless.
(In pencil:) Suit begun Ap'l 19, 1881. 4,915.61; int., 392.08.

14¾ (Indorsed:)

6935. U. S. circuit court, southern district of New York. Donald Cameron and ano. against Daniel Magone. Bill of particulars.

New York, *May* 21, 1881.

To S. L. Woodford, Esquire,
Defendant's Attorney:

Sir: Please to take notice that this action is brought to recover duties illegally exacted by the defendant as collector of customs at the port of New York, and the within is the plaintiffs' bill of particulars.

Stanley, Brown & Clarke,
Plaintiff's Attorneys, 158 *Broadway.*

Due service hereof admitted this 21 day of May, 1881.

S. L. Woodford,
U. S. Att'y, Defendant's Attorney.

15 United States circuit court, southern district of New York.

Donald Cameron & ano.,
vs.
Edwin A. Merritt, collector, &c.

The answer of the defendant herein, by Stewart L. Woodford, his attorney, to the complaint of the plaintiffs in the above-entitled action.

1st. He admits he was, at the time in said complaint mentioned, collector of the port of New York, and in such official capacity received payment from the plaintiffs for and on account of duties due to the United States, under the laws thereof, upon certain importations of merchandise imported by said plaintiffs into the port of New York from foreign countries.

16 2d. He alleges that any and all moneys received by him from plaintiffs at the times in said complaint mentioned were paid by

said plaintiffs as a debt due by them to the United States, and not otherwise; and were received by defendant by virtue of his office as said collector and under the direction of the Secretary of the Treasury, and for and on account of the United States, and were forthwith thereafter and before the commencement of this action, or the service of any protest, paid into the Treasury of the United States; and that the amount of said moneys, so received from plaintiffs, were the amount due from them to the United States according to the rate of duty imposed by law upon the several articles of merchandise by them imported and assessed with duty, and
no other sums than duties regularly assessed and ascertained and
17 liquidated according to law upon the plaintiffs' import entry thereof
were collected or received by defendant from the plaintiffs.

3d. And defendant further answering denies that he has at this time sufficient information to form a belief as to the precise description of the merchandise contained in the several packages referred to in the said complaint, by the marks and numbers and description there given, except in so far as to state, and defendant herein answering doth aver and state, that said merchandise was not dutiable according to the laws of the United States at the rates specified in the complaint.

4th. And defendant further answering admits that plaintiffs filed with defendant certain protests, but he denies that he has sufficient information to form a belief as to whether, upon the importations in question, protests
and appeals were made by the plaintiffs conformable to the laws
18 of the United States, and defendant leaves plaintiff' to make such
proof thereof as they may be advised.

5th. And as to any other allegations in said complaint contained, not hereinbefore fully answered or admitted, defendant denies the same and each thereof, and leaves the plaintiffs to make such proof thereof as they may be advised.

Wherefore defendant demands judgment, that the complaint be dismissed with costs.

STEWART L. WOODFORD,
United States Attorney, Attorney for Defendant.

(Endorsed:) U. S. circuit court, southern district of New York. Donald Cameron & ano. vs. Edwin A. Merritt, collector, &c. Answer. Stewart L. Woodford, United States attorney, attorney for defendant. To
Stanley, Brown & Clarke, plaintiff's attorneys.

19 At a stated term of the circuit court of the United States of
America for the southern district of New York, in the second circuit, held at the United States court rooms in the city of New York, on Thursday, the 28th day of January, in the year of our Lord one thousand eight hundred and eighty-six.

Present: The honorable Nathaniel Shipman, as circuit judge.

DONALD CAMERON, DONALD S. CAMERON, }
vs. } 6935.
EDWIN A. MERRITT. }

Now comes the plaintiffs, by Stanley, Clarke, and Smith, esqs., their attorneys, and move the trial of this cause. Likewise comes the defendant, by Thomas Greenwood, esq., ass't U. S. att'y, his attorney. Thereupon a jury is empanelled, and the cause proceeds to trial. After hearing the evidence of the parties and the argument of counsel on Wednesday, the third day of February, 1886, the court directs the jury to find a verdict for the plaintiffs generally. Thereupon the jury render a verdict whereby they find for the plaintiffs generally. It is ordered that 20 a certificate of probable cause be entered herein, and that the defendant have a stay of proceedings on said verdict for forty days.

A copy.

TIMOTHY GRIFFITH,
Clerk.

Ordered, that the trial minutes of the within-entitled action be amended by substituting the words, "in the sum of one thousand seven hundred and fifty-nine dollars and eighty-four cents ($1,759.84)," for and in the place of the word "generally."

N. SHIPMAN,
Judge.

Consented to.

STANLEY AND CLARKE,
Att'ys for Plaintiffs.
STEPHEN A. WALKER,
U. S. Atty, and Attorney for Def't.
(T. G.)

Judgment.

21 U. S. circuit court, southern district of New York.

DONALD CAMERON & DONALD S. CAMERON
vs.
EDWIN A. MERRITT.
} 6935.

The above-entitled cause having been brought on for trial before the Honorable Nathaniel Shipman, sitting as a judge of this court, and a jury, and a verdict having thereafter been rendered by the jury, under the direction of the court, for the plaintiffs in the sum of one thousand seven hundred and fifty-nine dollars and eighty-four cents ($1,759.84), and the costs having thereafter been taxed in the sum of forty-six dollars and eighty-five cents ($46.85):

Now, upon motion of Stanley and Clarke, attorneys for the plaintiffs,

It is ordered that the plaintiffs have judgment against the defendant herein in the sum of one thousand seven hundred and fifty-nine dollars and eighty-four cents ($1,759.84) damages, seventy-seven dollars and forty-three cents ($77.43) interest thereon, and forty-six dollars and eighty-five cents ($46.85) costs, making in all the sum of one thousand eight hundred and eighty-four dollars and twelve cents ($1,884.12), and have execution therefor.

Judgment signed this 27th day of October, 1886.

JOHN A. SHIELDS,
Deputy Clerk.

22 (Indorsed:) 6935. U. S. circuit court, so. dist. of New York. Donald Cameron & 'no. vs. Edwin A. Merritt. Judgment roll. Stanley and Clarke, att'ys for pl'ffs, No. 160 B'way, N. Y. City. U.S. circuit court. Filed Oct. 29, 1886, nunc pro tunc as of Oct. 12, 1886, as for also of and this day filed. Timothy Griffith, clerk.

23 United States circuit court, southern district of New York

DONALD CAMERON AND DONALD S. CAMERON
against
EDWIN MERRITT.
} No. 6935.

Defendant's bill of exceptions.

Afterwards, to wit, on the 28th day of January, 1886, at a stated term of this court, begun and held on the third Monday in October, 1885, before Hon. Nathaniel Shipman, district judge of the United States for the district of Connecticut, duly assigned to hold this court, before whom said suit was joined as between the parties as aforesaid, as by the record fully appears, came up to be tried, by a jury duly empanelled and sworn for that purpose, the said plaintiffs being represented by Stephen G. Clarke, esq., and the said defendant by William Dorsheimer, United States attorney, and Thomas Greenwood, assistant United States attorney.

In the course of the trial the said counsel for the defendant did take and allege sundry exceptions to the rulings, instructions, charge, and direction of the court, and to the refusal to give certain instructions
24 and directions to the jury, then and there prayed for by them,
which exceptions are hereinafter severally set forth.

To maintain the issue on the part of the plaintiffs, they introduced testimony tending to show that on the 26th day of July, 1880, they imported into the United States, at the port of New York, from Demarara, by the steamer Restless, certain sugars and molasses and made entry of the same at said port for warehouse, under the laws of the United States, providing for the warehousing of merchandise in bond.

That the proper officers of the customs estimated the duty on said sugars and molasses, under the respective provisions therefor contained in Schedule G, section 2504 of the United States Revised Statutes, at the sum of $8,956.09, as follows: On 436,542 pounds of sugar at two cents per pound, $8,730.84; and 5,505 gallons of molasses at five cents per gallon, $225.25; to which said sum of $8,856.09 they added twenty-five per centum thereon under section 3 of the act of March 3, 1875 (18 U. S. Statutes at Large, 339), making in all, as the estimated duties on said sugars and molasses, the sum of $11,195.11.

And pursuant to the aforesaid laws for warehousing merchandise, the plaintiffs gave a bond, a copy of which, with all the endorsements thereon as given in evidence at the trial, is as follows:

25 [Bond No. 12912.]

Warehousing bond.

Know all men by these presents, that we, Donald Cameron & Co. as principals and J. W. Mott as sureties, are held and firmly bound unto the United States of America in the sum of twenty-three thousand dollars, to be paid to the United States, to the payment whereof we bind ourselves, our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents.

Witness our hands and seals at the port of New York this 27th day of July, eighteen hundred and eighty .

Whereas certain goods, wares, and merchandise, consisting of eight hundred and seventeen p'k'g's sugar, forty-five puncheons molasses, were originally imported at the port of New York, in the Restless, whereof is master, from Demarara on the 26th day of July, eighteen hundred and eighty ;

And whereas the above-bounden principals have this day entered the same at the port of New York, under the laws of the United States providing for the warehousing of merchandise in bond, as per warehouse entry number , in which the said goods, wares, and merchandise are also described or set forth ;

Now, therefore, the condition of the above obligation is such that if, within one year from the said date of original importation, the said goods, wares, and merchandise shall be regularly and lawfully withdrawn 26 from public store or bonded warehouse on payment of the legal duties and charges to which they shall then be subject ; or if, after the expiration of one year and within three years from the said date of original importation, they shall be so withdrawn upon the like payment, with ten per centum added upon the amount of such duties and charges ; or if, at any time within three years from the said date of original importation, they shall be so withdrawn for actual export beyond the limits of the United States, then the above obligation to be void ; otherwise, to remain in full force.

DONALD CAMERON & CO., [SEAL.]
Per STUART CAMERON, [SEAL.]
116 *Broad St.*
J. M. MOTT,
62 *Wall St.*

Signed, sealed, and delivered in the presence of—
E. E. WILLIS.

(Endorsed :)

Bond No. 12912. Importer : Donald Cameron. Vessel : Restless.

CR. **DR.**

Liquidations. **Duty....................$11,195.11**

Deduct.			**Add.** **Aug. 20, '80.**	**Liq.**	**12,157.76**
Date.	**Description of withdrawal.**	**Amount of duty.**	**Date.**	**Description of withdrawal.**	**Amount of duty.**
1880.					
Aug. 4	Con. P. B................	10,913.55	1,744.21		
Sept. 10	"	1,244.21			12,157.76
		12,157.76	Canceld. 13 Sept., '80. D. S. K.		

27 That on the 4th day of August, 1880, the plaintiffs withdrew the aforesaid sugars from warehouse for consumption and paid to the defendant, as collector of the port of customs at said port, as the estimated duties thereon and on account of the duties thereon thereafter to be ascertained and liquidated by him as said collector, the sum of $10,913.55.

That on the 20th day of August, 1880, the defendant, as said collector,

determined the weight of the said sugars and classified the same for duty as follows: 3,260 pounds thereof as not above No. 7, Dutch standard in color; 426,095 pounds as No. 7 and not above No. 10, Dutch standard in color, and 39,345 pounds as above No. 10 and not above No. 13, Dutch standard in color; and, according to the provisions for sugar contained in Schedule G, ascertained and levied thereon duty on the said 3,260 pounds at the rate of one and three-fourths cents per pound and in the sum of $57.05; on the said 426,095 pounds, at the rate of two cents per pound, in the sum of $8,521.90; on the said 39,345 pounds at the rate of two and one-fourth cents per pound and in the sum of $825.26; and determined the quantity of said molasses at 5,240 gallons and classified the sames as molasses, and, according to the provisions contained in Schedule G, ascertained and levied thereon duty at the rate of five cents per gallon and in the sum of $262, all of said duties being ascertained and levied as aforesaid, pursuant to the provisions of said Schedule G, in the sum of $9,726.21. And the defendant, as said collector, pursuant to the aforesaid section 3 of the act of March 3, 1875, in addition to the said sum
28 of $9,726.21, ascertained and levied on said sugars and molasses, as further duties, an amount equal to twenty-five per centum thereof in addition, to wit, $2,431.55; amounting in all, as a total sum of duties ascertained and levied by said defendant as collector on the said sugars and molasses, to the sum of $12,157.76.

That on the 10th day of September, 1880, the plaintiffs withdrew the aforesaid molasses from the warehouse for consumption, paid to the defendant as said collector, in addition to the sum of $10,913.55 theretofore paid by them on account of the duties ascertained and levied on said sugars and molasses as aforesaid and as a balance of such duties, the further sum of $1,244.21, making in all the sum of $12,157.76 paid by them and levied by the defendant as said collector as duties thereon.

That of said sum of $1,244.21 the sum of $327.50 was the amount of duties ascertained and levied by the defendant as said collector as aforesaid on the aforesaid molasses, and the sum of $916.71 was the balance of duties so ascertained and levied on the aforesaid sugars.

That the withdrawal entry of the said molasses made, as aforesaid, on the 10th day of September, 1880, bears the endorsement in red ink, "To close, $1,244.21."

That thereafter, on the 15th day of September, 1880, the plaintiffs made a protest, as follows:

"No. 116 Broad St., New York, *September* 15.

"E. A. Merritt,
Collector of Customs, Port of New York:

"Sir: On the 26th day of July, 1880, we made a warehouse entry
29 for 178 hogsheads, 626 bags, and 13 barrels of sugar, and 45 punch. molasses per the ship Restless, from Demarara, under bond No. 12912, entry No. 85863. On the 9th day of September, 1880, we presented the withdrawal entry at the custom-house to close our bond, and learned for the first time the amount of duties assessed on our goods, and hereby protest against your decision as to the rate and amount of duties to be paid on 178 hhds. and 626 bags of sugar, because the United States appraiser has returned said sugar as not above No. 7, Dutch standard in

color, for 178 hhds. and 427 bags; above No. 7 and not above No. 10 for 199 bags. This makes said sugar only liable under existing laws to the duty at one and three-fourth cents per pound and 25 additional for 178 hhds. and 427 bags, at two cents per pound and 25 as additional for 199 bags, and not two cents per pound and 25 as additional for 178 hhds. and 427 bags and two and one-fourth cents per pound and 25 as additional for 199 bags as charged by you.

"We claim that under Schedule G, section 2504, of the Revised Statutes of the act of Congress, passed March 3, 1875, such sugar is entitled to be entered at one and three-fourth cents per pound and 25 additional for 178 hhds. and 427 bags, and two cents per pound and 25 additional for 199 bags.

"We pay the excess exacted under compulsion so as to get the goods.

"Respectfully,

"DONALD CAMERON & COMPANY."

30 That on the 15th day of September, 1880, the plaintiffs appealed from the decision of the defendant as collector to the Secretary of the Treasury; that on January 22, 1881, the Secretary affirmed the decision of the defendant as collector, and that on the 19th day of April, 1881, the plaintiffs brought this suit to recover the duties claimed in their protests.

That of the said sugars 388,964 pounds was not above No. 7, Dutch standard in color, and was dutiable at the rate of one and three-fourth cents per pound and twenty-five per centum thereof in addition, and 79,736 pounds was above No. 7 and not above No. 10, Dutch standard in color, and was dutiable at the rate of two cents per pound and twenty-five per centum thereof in addition.

That the amount of lawful duties on the said 388,964 pounds of sugar, at the rate of one and three-fourth cents per pound, was $8,508.58; that the amount of lawful duties on said 79,736 pounds thereof, at the rate of two cents per pound, was $1,993.40, amounting in the aggregate to the sum of $10,501.98 as the lawful duties on said sugars.

That the excess of duties paid on said sugars August 4, 1880, was $411.56, and interest thereon from the date of payment thereof $135.52, and the excess of duties paid thereon in addition September 10, 1880, $916.71, and the interest thereon from the date of payment thereof $296.05.

The plaintiffs then called as a witness on their behalf I. Augustus Stan-
wood, who, being sworn, testified that he was and for a long time
31 past had been a liquidator and adjuster of duties at the custom-
house in the city of New York. On being shown the plaintiffs'
withdrawal entry of September 10, 1880, and the endorsements thereon in red ink, "to close, $1,244.21," and asked what the words "to close" meant, he testified that they meant that there was an unsettled balance on the plaintiffs' bond to that amount; that it might be an overpaid or an underpaid balance; that if it was an underpaid balance it was customary to endorse on the withdrawal entry the words "due to close;" if an overpaid balance to endorse thereon the words "to close," and allow the difference, allow a smaller amount to be paid rather than is represented by the merchandise which was withdrawn.

That when an importer presented a withdrawal entry on merchandise in warehouse, which was the closing withdrawal on the bond; that is, withdrawing the last of the merchandise covered by their bond and withdrawal entry; that the withdrawal entry was not passed until it was compared with the warehouse ledger, to see whether the full amount of duties had been paid on the merchandise which had been previously withdrawn; that if there was an unpaid balance it was noted on the withdrawal entry, or if there was an overpaid balance it was also noted on the withdrawal entry; that in the usual course of business in respect to the withdrawal of merchandise, prior to the last or final withdrawal, he could not say that the ascertainment of duty upon the quantity withdrawn, prior to the last withdrawal, was or was not inaccurate except to say that withdrawal entries were not liquidated; that no withdrawal entries were liquidated;
32 that what he meant was, the importer made his first, second, third, or all withdrawal entries, except the last one; and his valuation of the merchandise therein, and even the rate of duties thereon as given by him, might not be the correct ones, and yet the withdrawal entry might be passed and paid as he made it; that very often in the case of the withdrawal entries, with the exception of the last withdrawal entry, the importer might not pay the proper amount of duties on the merchandise mentioned in such withdrawal entries; that the character of the account kept in the warehouse ledger of the custom-house to which he refers was as follows: Under the bond number given to the importation was a description of the importation, liquidated figures of duties, as liquidated in the warehouse entry on one side, and on the opposite side, a notation of the withdrawal entries, the dates when they were made, the number of packages withdrawn, the duties paid, date of withdrawal, and date of payment also, which sometimes differ a little. The witness was then shown a paper which he testified was a copy made from the warehouse ledger in the custom-house, in respect to the importation of the sugars and molasses in suit.

The plaintiff's counsel then offered this paper in evidence, and a copy thereof is as follows:

33	4 —	1¾	7339.		1¾	2
	26 22 —	2	40367 =	47706	7339	40367
					33034	
	18	1¾	=	33034	61122	39333
					200690	
	33	1¾	=	61123	55858	
					27485	
	101	1¾	=	200690	3260	
					388788	79700
	288	1¾	=	55858	176	36
					388964	79736
	199	2	=	39333	194482	2
					97241	
	139	1¾	=	27485	680687	159472
					159472	
	13	1¾	=	3260	840159	
					210040	
		Samples		212	1050199	

Amount assessed on sugar	11,830.26
" under Dutch standard	10,501.99
Excess	1,328.27
Amount of excess paid on withdrawal Aug. 4, 1880	411.56
" " " " " " Sept. 10, "	916.71
	1,328.27

(Endorsed:) U. S. circuit court S. D. N. Y. Pl'ff. Exhibit I. James N. Fish, stenographer.

The witness testified that he should say that all the figures on the withdrawal entry of September 10, 1880, except those on the first line stating what was being withdrawn, were made in the custom-house, and by the clerks of the custom-house.

34 This witness on cross-examination testified that the plaintiffs made out their warehouse entry, attempted to enter the sugar in suit in said warehouse entry as dutiable at one and three-fourth cents per pound and twenty-five per centum thereof in addition, the lowest rate at which sugars were then dutiable.

That what appears then to have been done was that the entry clerk who made the original designation of duty on the warehouse entry, estimated the duties which are not the liquidated duties, and entered the sugar as dutiable at the rate of two cents per pound and twenty-five per centum thereof in addition; that the aforesaid estimated duties were the entered amount of duties; that the sugar was really entered at two cents per pound and twenty-five per centum thereof in addition; that it was made so by the entry clerk; and that it is so set out on the back of the invoice.

The witness, in answer to the court, who asked him "What business had the entry clerk to do that, he doesn't examine the sugars?" testified: No, sir; but it is the custom of the entry clerk when he is satisfied that there were no importations of sugar, where all came in at a lower rate—practically none; under the then rulings all sugars contained some two cent sugar and some two and one-fourth cent sugar, and the entry clerk was morally certain that it could not all be dutiable at the lower rate; and the custom-house officials obliged the importer to enter it at two cents per pound for the sake of safety; that the entry clerk did this in the gen-
35 eral run of business in the custom-house because he knew it would
be so adjusted by the liquidator of duties; that the entry clerk stated on the invoice of the sugar and molasses what rate of duty he had made on the entry, and the amount of duties estimated by him thereon; that it did not make any difference to any one as to the amount of the bond required under the law except that the entry clerk would know that those figures would all be gone over, and the entry would be liquidated upon the appraiser's report; but it was manifest to the entry clerk's mind that the sugars were entered too low, and he was bound to put on the entry what he thought was the proper rate of duty; and the entry clerk made the changes on the warehouse entry as to the rates of duty, so that the sugars were subjected to such rates and the duties thereon at such rates, were estimated as hereinbefore set out; that immediately after, in the regular course of business at the custom-house, the invoices of the sugars and molasses went to the appraiser; that he took the invoices, reported on the character of the sugar, the grades thereof, and separated the

lowest grades of each; that the appraisement of the said sugars and molasses was made August 6th, 1880; that the duties on the said sugars and molasses were liquidated as appears by the warehouse entry thereof, August 20, 1880; that the endorsement on the said warehouse entry, "E. A., 8-13-80," means entered Monday, August 13, 1880, and was done in liquidator's office; and that there is on the warehouse entry the check of the liquidator who made the liquidation; that in the usual course of business at the custom-house the entry and invoice would then go to
36 the naval office to receive the check of the naval officer liquidator;
and that on the warehouse entry was the check of such liquidator; that in the usual course of business that check signified that he had gone over the figures, set out the duty on the sugars and molasses, and found the figures correct; that the stamp on the warehouse entry, "W. H. Notified importer August 20, 1880," meant that action had been taken on the invoice at the warehouse and regularly sent to the liquidator at the naval office and an ascertainment of duties made by him, that the papers had passed the collector's office; that the entry and invoice had been sent to the naval office and the liquidation of duties had been agreed to by the naval officer and checked; if there was a difference it would go back and forth between the collector's office and the naval office until any difference was adjusted; and that that agreement as to the duties in the case of the sugars and molasses in suit had been made at that date, August 20, 1880; that the entry had got back from the naval office to the collector's office and had been agreed to over there; and that there was stamped thereon, "Liquidated and notified importer August 20, 1880;" that "notified importer" meant that that fact had been stated on sheet of paper and hung up in the custom-house for the importer to take notice from.

On redirect examination the witness then had read to him from article 616, page 269, of the general regulations under the custom-house and navigation laws of the United States, &c., issued by the Treasury Department, January 1, 1874, the following paragraph relative to ware-
37 house goods withdrawn from warehouse for consumption:

"Goods withdrawn for consumption may be taken at average valuation—care being had that on the last withdrawal the entire balance of duties be collected. Should the final withdrawal entry be for export or transportation and there be any difference between the actual duty and the amount due, to close the sum due on the warehouse entry, the excess, if any, shall be refunded on the last withdrawal for consumption, and the deficiency, if any, collected on amendment to the entry," and then testified that the practice of the custom-house in the city of New York was in accordance with the requirements of the regulation read to him, and such had been the practice in the case of the importations in suit.

Both sides thereupon having rested, the plaintiffs moved the court to direct the jury to find a verdict in their favor for the sum of $1,759.84; and the defendant moved the court to direct the jury to find a verdict in his favor on the ground that the protest upon which the plaintiffs rely was not made within ten days after the liquidation of the duties assessed by the defendant as said collector, as required by section 2931 of the Revised Statutes.

The court denied the defendant's motion in his favor, and to this ruling of the court defendant duly excepted, which exception was duly noted and allowed by the court.

38 The court granted the plaintiffs' motion for verdict in their favor, to which ruling the defendant duly excepted, which exception was duly noted and allowed.

The jury thereupon, under the direction of the court, found a verdict for the plaintiffs in the sum of $1,759.84.

And inasmuch as none of such exceptions, matters and things, would otherwise appear by the record of said trial, therefore, by the prayer of the defendant, by his counsel, the said judge has settled, allowed, and signed this bill of exceptions, and ordered that the same be filed with like force and effect as if it had been reduced to writing, signed, and filed before the case was given to the jury.

Witness my hand this 28th day of October, 1886.

N. SHIPMAN, *Judge.*

The foregoing bill of exceptions is consented to as correct.

STANLEY & CLARKE,
Plff's Att'y.
STEPHEN A. WALKER,
U. S. Att'y & Att'y for Def't.

39 (Indorsed:) No. 6935. U. S. circuit court, southern district of New York. Donald Cameron and Donald Q. Cameron, versus Edwin Merritt. Defendant's bill of exceptions. Stephen A. Walker, United States Attorney, attorney for defendant.

Due service of a copy of the within is hereby admitted. New York, ——— 188–, ——— ———, attorney for plaintiff. To ——— ———, attorney for plaintiff. U. S. circuit court. Filed Oct. 29, 1886. Nunc pro tunc as of Oct. 12, 1886, as per order of court. Timothy Griffith, clerk.

40 *Assignment of errors.*

Supreme Court of the United States.

EDWIN A. MERRITT, PLAINTIFF IN ERROR,
v.
DONALD CAMERON & DONALD E. CAMERON,
defendants in error.

Afterwards, to wit, on the second Monday of October in the same term, before the justices of the said court, at the Capitol in Washington, comes the said plaintiff in error by Stephen A. Walker (his) attorney, and says that in the record and proceedings aforesaid there is manifest error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid, in form aforesaid given, was given for the said defendants in error against the said plaintiff in error, whereas, by the law of the land, the said judgment ought to have been given for the said plaintiff against the said defendants.

And the said plaintiff prays that the judgment aforesaid for the error aforesaid and other errors in the record and proceeding aforesaid may be reversed, annulled, and altogether held for nothing, and that he, the said plaintiff, may be restored to all things which he has lost by occasion of said judgment, &c.

STEPHEN A. WALKER,
Attorney for Pl'ff in Error.

41 (Indorsed:) United States Supreme Court, Edwin A. Merritt, plaintiff in error, *vs.* Donald Cameron & ano., defendants in error. Assignment of error. Stephen A. Walker, attorney for plaintiff in error. Due service of a copy of the within assignment of errors is hereby admitted this 18th day of F'y, 1887. Stanley & Clarke attor'ys for defendants in error. U. S. circuit court. Filed Feb'y 18, 1887. Timothy Griffith, clerk.

42 UNITED STATES OF AMERICA, *ss*:
To Donald Cameron & Donald E. Cameron, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October, eighteen hundred and eighty-seven, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Edwin A. Merritt is plaintiff in erro. and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Dated, Feb'y 18, 1887.

WM. J. WALLACE.

43 (Indorsed:) 6935. U. S. Supreme Court. Edwin A. Merritt, plaintiff in error, against Donald Cameron & ano, defendants in error. Citation. Due service of a copy of the within citation is hereby admitted this 18 day of Feb'ry, 1887. Stanley & Clarke attorneys for defendants in error.

(Stamp:) U. S. circuit court. Filed Feb. 18, 1887. Timothy Griffith, clerk.

(Indorsement on cover:) No. 378. Edwin A. Merritt, collector of the port of New York, plaintiff in error, vs. Donald Cameron and Donald E. Cameron. S. New York, C. C. U. S. Filed August 25, 1887.

Office Supreme Court U. S.
FILED.
NOV 15 1890
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

October Term, 1890.

Edwin A. Merritt, collector of the port of New York, plaintiff in error, *vs.* **Donald Cameron and Donald E. Cameron.**	No. 84.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR PLAINTIFF IN ERROR.

In the Supreme Court of the United States.

October Term, 1890.

Edwin A. Merritt, collector of the port of New York, plaintiff in error, *vs.* Donald Cameron and Donald E. Cameron.	No. 84.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR PLAINTIFF IN ERROR.

THE CASE.

The action below was by the defendants in error, importers, to recover from the collector of the port of New York an excess of duties illegally exacted upon an importation of sugar and molasses from Demarara. The only defense which appears to have been made by the collector was that the protest of the importers against the illegal assessment was not filed with him within the time required by section 2931, Revised Statutes.

STATEMENT OF FACTS.

The bill of exceptions, made part of the record, shows the following state of facts:

On July 26, 1880, Cameron & Co. imported and entered in bond for warehouse upwards of half a million pounds of sugar, and about 5,500 gallons of molasses. The duties thereon, as estimated by the proper officers of the customs, amounted to $11,195.11. A bond was executed by the importers to the Government in the sum of $23,000 conditioned—

> That if, within one year from the said date of original importation, the said goods, wares, and merchandise shall be regularly and lawfully withdrawn from public store or bonded-warehouse on payment of the legal duties and charges to which they shall then be subject; or if, after the expiration of one year, and within three years, from the said date of original importation, they shall be so withdrawn upon the like payment, with ten per centum added upon the amount of such duties and charges; or if, at any time within three years from the said date of original importation, they shall be so withdrawn for actual export beyond the limits of the United States, then the above obligation to be void; otherwise to remain in full force.

On the 4th day of August, 1880, Cameron & Co. withdrew all the sugars from warehouse for consumption, and paid the collector, "as the estimated duties thereon, and on account of the duties thereafter to be ascertained and liquidated by him as said collector, the sum of $10,913.55."

On the 20th of August, 1880, the collector ascertained and liquidated the duties upon these sugars at $11,830.26, and upon the molasses at $327.50. On September 10, 1880, Cameron & Co. withdrew the molasses from the warehouse for consumption, and paid to the collector $1,244.21, of which $327.50 was for the ascertained duty on the molasses, and $916.71 was for additional duty required on the sugars under the ascertainment and liquidation of the collector. On September 15, 1880, Cameron & Co. protested in writing against the collector's assessment of duties on the sugars as excessive and illegal, and on the same day appealed to the Secretary of the Treasury. January 22, 1881, the decision of the collector was affirmed by the Secretary, and on April 19, 1881, this suit was brought.

It appeared in evidence that where several withdrawal entries were made of merchandise covered by one bond, none before the final entry was liquidated, but the payments required on them were such as conformed to the estimate of duties on the original entry, and might not be for the proper amount of duties. The withdrawal entry of the last merchandise withdrawn under the bond was not passed until it was compared with the warehouse ledger to see whether the full amount of duties had been paid on the merchandise which had been previously withdrawn. If there had been too much or too little paid, it was noted on this withdrawal entry. On the withdrawal entry of September 10th for the molasses, there was an indorsement in red ink "To close $1,244.21."

It also appeared in evidence that the appraisement of the sugars and molasses was made August 6, 1880; that the duties were liquidated thereon, as appears by the warehouse entry thereof August 20, 1880; that the entry had gone through the due course, had received the proper indorsement of the various officers of customs, and was finally stamped "liquidated and notified importer August 20, 1880," in the collector's office. "Notified importer" meant that written notice of the liquidation had been hung up in the custom-house for the information of the importer. The regulations of the Treasury provide that—

> Goods withdrawn for consumption may be taken at an average valuation, care being had that on the last withdrawal the entire balance of duties be collected. Should the final withdrawal entry be for export or transportation, and there be any difference between the actual duty and the amount due, to close the sum due on the warehouse entry, the excess, if any, shall be refunded on the last withdrawal for consumption, and the deficiency, if any, collected on amendment to the entry.

Counsel for the collector, on this evidence, requested the court to charge the jury to return a verdict for the defendant, on the ground that the protest was not filed within the time required by section 2931. This motion was denied, to which ruling an exception was taken. On motion of the plaintiffs below, the jury was directed to find a verdict for the plaintiffs for $1,759.84, and amount admittedly due if the protest was filed within time. To this direction of the court exception by the defendant was duly noted and allowed.

ASSIGNMENT OF ERROR.

The circuit court erred in not directing the jury, as requested by counsel for the defendant below, to return a verdict in favor of the defendant, on the ground that the protest was not filed within ten days after the ascertainment and liquidation of the duties by the collector had been stamped upon the warehouse entry, as required by section 2931, Revised Statutes.

ARGUMENT.

I.

Section 2931 provides that—

> On the entry of * * * any merchandise, the decision of the collector of customs at the port of importation and entry as to the rate and amount of duties to be paid * * * on such merchandise, and the dutiable costs and charges thereon, shall be final and conclusive against all persons interested therein unless * * * the owner, importer, consignee, or agent of the merchandise * * * shall, within ten days after the ascertainment and liquidation of the duties by the proper officers of the customs, as well in cases of merchandise entered in bond as for consumption, give notice in writing to the collector on each entry, if dissatisfied with his decision, setting forth therein distinctly and specifically the grounds of his objection thereto, and shall within thirty days after the date of such ascertainment and liquidation appeal therefrom to the Secretary of the Treasury. * * *

There is no doubt in this case that the duties were ascertained and liquidated on the 20th of August, and that such ascertainment and liquidation was stamped on the warehouse entry on that date. The protest was not filed until the 15th of September. If the ascertainment and liquidation by the collector was made at the proper time under the law and the regulations of the Treasury Department, there would seem to be no escape from the conclusion that the protest was not filed in time, and that the decision of the collector involved in such ascertainment and liquidation was binding and conclusive on the importer, requiring a verdict for the collector by direction of the court. (*Davies* vs. *Miller*, 130 U. S., 284.)

The position of the plaintiffs below, the defendants in error here, is understood to be that the ascertainment and liquidation of the collector should have been on the final withdrawal for consumption of all the goods imported, and not upon the warehouse entry in due course.

It is contended on behalf of the United States that the ascertainment and liquidation upon the warehouse entry by the collector, stamped thereon on the 20th of August, made as it was in due course, after inspection and appraisement, was made at the proper time.

The duty imposed by statute upon the collector does not require him to make any distinction between goods entered originally for consumption, and those entered for warehouse, in the course to be pursued by him in the matter of ascertainment and liquidation. There is nothing in the law directing him to delay his liquidation on goods entered for warehouse until they have been withdrawn. In order to show this, it will be an aid to consider the provisions of the statute with reference to the course to be pursued by the customs officers in respect to the merchandise before liquidation can take place.

By section 2806 it is provided that no merchandise shall be brought into the United States on any vessel unless the master has on board manifests in writing of the cargo, signed by such master.

Section 2807 provides what the manifests shall contain, copies of which, by sections 2811, 2812, and 2813, he is required to deliver to the customs officers.

By section 2841 the forms of oaths, whenever merchandise is imported into the United States by invoice, are described.

By section 2869 it is provided that the collector, with the naval officer, shall, according to the best of his or their judgment or information, make a gross estimate of the amount of the duties on the merchandise to which the entry of any owner or consignee, his factor, or agent, shall relate, which estimate shall be indorsed upon such entry and signed by the officer making the same. The amount of the estimated duties having first been paid, or secured to be paid, pursuant to the provisions of this title, the collector shall, together with the naval officer, grant a permit to land the merchandise whereof entry has been so made. (See, also, article 598 of Regulations of 1874.)

Section 2882 provides that no merchandise brought in any vessel from any foreign port or place, requiring to be weighed, gauged, or measured in order to ascertain the duties thereon, shall, without the consent of the proper officer, be removed from any wharf or place upon which the same may be landed or put before the same shall have been so weighed, gauged, or measured; and if spirits, wines, or sugars, before the proof or quality and quantity thereof is ascertained or marked thereon by or under the direction of the proper officer.

Section 2888 provides that when the delivery of merchandise from any vessel is completed, copies of the accounts or entries which have been made thereon shall be returned to the collector of the district and the naval officer, if any, within three days after such delivery has been completed. These returns, under section 2889, are compared with the manifests and the entries and corrected by the naval officer, and finally by the collector.

By section 2890 the weighers, gaugers, and measurers make returns of the articles by them weighed, gauged, or measured within three days after the discharge from any vessel.

Section 2899 provides that no merchandise liable to be inspected or appraised shall be delivered from the custody of the officers of the customs until the same has been inspected or appraised, or until the packages sent to be inspected or appraised shall be found to be fairly and correctly invoiced and put up, and so reported to the collector, unless a redelivery bond shall be given for the packages not designated for examination.

By section 2901 the collector is to designate one package of every invoice, and one of every ten packages of merchandise to be opened, examined, and appraised, and to be removed to the public stores for such examination.

Section 2902 makes it the duty of the appraisers to ascertain, estimate, and appraise the true and actual market value and wholesale price of the merchandise at the time of the exportation, in the principal markets of the country whence the same has been imported into the United States.

Sections 2922 and 2923 provide for the taking of evidence by the appraisers, the collector, or the naval officer, as the case may be, touching the true market value or wholesale price of any merchandise imported.

By section 2929 the principal appraisers may revise and correct the report of the assistant appraiser. The collector may order a new appraisement.

By section 2930 the importer, if he shall be dissatisfied with the appraisement, may, by giving notice to the collector, have an appraisement by two merchant appraisers, and if these shall disagree, the collector shall decide between them.

Every one of the foregoing provisions of the statutes has application as well to goods entered for warehouse as to goods entered originally for consumption. This will be seen by reference to articles 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, and 603, of Treasury Regulations 1874. Even the privilege extended in section 2899 to the importer, upon his giving bond in double the estimated value of the merchandise, to have delivered to him all the packages unappraised except those designated for examination and appraisement, has in practice application to goods entered for warehouse. (See article 437, Treasury Regulations of 1857; article 601 of the Treasury Regulations of 1874; article 675 of the Treasury Regulations of 1884.)

It will thus be seen that everything required under the law before the ascertainment and liquidation of the duties, that is the measurement, weighing, or gauging, the inspection and appraisal, and determination of the dutiable value, is to be proceeded with in the case of the entry for warehouse exactly as in entries for consumption. (Elmes' Law of Customs, secs. 640, 641, 642, 643.) All that remains to be done thereafter is that the collector should decide what the duties are, the facts, upon which the decision is to rest, having all been determined.

It is contended on behalf of the United States that the ascertainment and liquidation follows at once in the due course of business and as soon as the collector shall reach the entry in question, whether it be for warehouse or for consumption. If the contention of the defendants in error is correct, then they must maintain that after all the facts upon which the collector's decision is to rest have been determined he is to delay the final ascertainment of the duties with respect to goods entered for warehouse until the importer, at his option, shall invoke such decision by withdrawing the goods, even if such withdrawal does not take place for three years.

The warehousing system for all merchandise was begun by the act of August 6, 1846 (9 Stat. L., 53), an act to establish a warehousing system, by amending section 12 of the act of 1842. Section 12 thus amended required the duties on imported merchandise to be paid in cash, but provided that in all cases of failure to pay the duty within the period allowed by law to make entry thereof—

> Or whenever the owner, importer, or consignee shall make entry for warehousing the same in writing, in such form and supported by such proof as shall be prescribed by the Secretary of the Treasury, the said

> goods, wares, or merchandise shall be taken possession of by the collector and deposited in the public stores, or in other stores to be agreed on by the collector or chief revenue officer of the port and the importer, owner, or consignee, the said stores to be secured in the manner provided by the first section of the act of the twentieth of April, one thousand eight hundred and eighteen, entitled "An act providing for the deposit of wines and distilled spirits in public warehouses, and for other purposes," to be kept with due and reasonable care at the charge and risk of the owner, importer, consignee, or agent, and subject at all times to their order upon the payment of the proper duties and expenses, *to be ascertained on due entry thereof for warehousing*, and to be secured by a bond of the owner, importer, or consignee, with surety or sureties, to the satisfaction of the collector, in double the amount of the said duties, and in such form as the Secretary of the Treasury shall prescribe.

By section 4 of the act of March 28, 1854, entitled "An act to extend the warehousing system" (10 Stat. L., 270), the period for warehousing was extended from one to three years from the date of the original importation. Under the law of 1846, as amended by the law of 1854, the following regulation was promulgated by the Secretary of the Treasury (article 438 of the Treasury Regulations of 1857) with reference to goods entered for warehousing:

> The appraisers having reported on the invoice, the weigher, gauger, or measurer, having made his return of the quantity, the damage, if any, having been ascertained, and the dutiable value of the merchandise and *duties finally determined*, the importer, consignee, or agent may at any time within three years

> from the date of importation withdraw from warehouse any quantity of the same, not less than an entire case or package, or not less than one ton in weight, if the merchandise be in bulk; but it is to be distinctly understood that no merchandise can be entered for exportation, or for transportation from one port to another in the United States and withdrawn from warehouse on such entry until all the examinations and returns have been made, and the dutiable value and duties definitely fixed.

The law of 1846, as amended by the law of 1854, continued in force until the Revised Statutes, and was then embodied in sections 2964, 2962, and 2968. Section 2964 is as follows:

> In all cases of failure or neglect to pay the duties within the period allowed by law to the importer to make entry thereof or whenever the owner, importer, or consignee shall make entry for warehousing the same in writing, in such form, and supported by such proof as shall be prescribed by the Secretary of the Treasury, the merchandise shall be taken possession of by the collector, and deposited in the public stores, or in other stores to be agreed on by the collector or chief revenue officer of the port, and the importer, owner, or consignee, such stores to be secured under the joint locks of the inspector and importer, there to be kept, with due and reasonable care, at the charge and risk of the owner, importer, consignee, or agent, and subject at all times to their order, upon payment of the proper duties and expenses, *to be ascertained on due entry thereof for warehousing*, and to be secured by a bond of the owner, importer, or consignee, with surety to the satisfaction of the collector, in double the amount of the duties, and in such form as the Secretary of the Treasury shall prescribe.

Article 603 of the regulations of 1874 provided as follows with reference to goods entered for warehouse:

> The appraisers having reported on the invoice; the weigher, gauger, or measurer, having made his return of the quantity; the damage, if any, having been ascertained; and the dutiable value of the merchandise, and duties, finally determined, the importer, consignee, or agent, may withdraw the goods from warehouse.

The same article appears as article 677 of the Regulations of 1884.

The language of section 2964 expressly requires the duties to be ascertained on the due entry of the goods for warehouse. The regulations above quoted merely carry out that provision and show that the liquidation is to follow immediately upon the report of the appraisement. We have, then, a gross estimate of duties before the merchandise is landed (sec. 2869, art. 598, Reg. 1874), upon which the bond is fixed, and then an ascertainment and liquidation upon the due entry of the goods for warehouse. (*Fabbri* vs. *Murphy*, 92 U. S., 192; *U. S.* vs. *Benson*, 2 Cliff., 520; Elmes on Customs, sec. 643.)

Section 2931 provides, as has been seen, that the notice of dissatisfaction with the decision of the collector shall be given within ten days after the ascertainment and liquidation of the duties by the proper officers of the customs "as well in cases of merchandise entered in bond as for consumption." It is manifest that the gross estimate of duties provided in section 2869 and in article 598 of the Regulations of 1874, can not be the ascertainment and liquidation of the duties "in cases of merchandise entered in bond."

The two terms are wholly different in meaning. Ascertainment and liquidation is the definite fixing of the exact amount of duties, while the decision of the collector provided for in section 2869 and article 598 is merely the making of a gross estimate of the amount of the duties before the merchandise has been weighed, and before it has been inspected or appraised for the purpose of fixing the bond.

On the other hand, when merchandise is withdrawn from bond, it is entered for consumption, and ascertainment and liquidation of the duties upon such withdrawal entry would not be an ascertainment and liquidation of duties in cases of merchandise entered in bond. Reasoning by exclusion, therefore, the expression in section 2931, "the ascertainment and liquidation of duties * * * in cases of merchandise in bond," must refer to their liquidation while they are in bond and neither to the estimate before they are entered for bond nor to any liquidation made on their withdrawal. Any other construction robs the words "as well in cases of merchandise entered in bond" of any meaning.

By the act of 1845 the protest was to be filed at or before the payment of the duties. The operation of this act upon the warehousing provisions of the acts of 1846 and 1854 was to prevent the necessity of any protest until the withdrawal of the goods for consumption and the payment of the duties, giving to the importer who should warehouse his goods all the time between the decision of the collector in his final liquidation of the duties and the withdrawal from the warehouse before protest. The evident intention of the act of 1864 was to make the time for protest the same in cases of entry for warehouse as in those of entries for consumption, without respect to the payment of the duties. To indicate that change, to enforce that amendment, the words "as well in cases of merchandise in bond as for consumption" were inserted. When sections 2931 and 2964 are read together, as they must be, the provision looking to the ascertainment of duties in section 2964 on the due entry of the goods for warehousing fixes the meaning of the ascertainment and liquidation of the duties in cases of merchandise entered in bond referred to in section 2931.

Section 2970 seems to have been relied upon below as furnishing an argument in favor of delaying the liquidation until the merchandise deposited shall be withdrawn for consumption. That section is as follows:

> Any merchandise deposited in bond in any public or private bonded warehouse may be withdrawn for consumption within one year from the date of original importation on payment of the duties and charges to which it may be subject by law at the time of such withdrawal; and after the expiration of one year from the date of original importation, and until the expiration of three years from such date, any merchandise in bond may be withdrawn for consumption on payment of the duties assessed on the original entry and charges, and an additional duty of ten per centum of the amount of such duties and charges.

The point, understood to have been made, was that, as by this section the duty to be paid on withdrawal was that to which the merchandise should be subject by law at the time of withdrawal, the fixing of the duties was to be postponed until such period. By section 2983 it is provided that in no case shall there be any abatement of the duties or allowance made for any injury, damage, deterioration, loss, or leakage sustained by any merchandise while deposited in any public or private bonded warehouse. It is evident, therefore, that it was not the intention by section 2970 to reduce or change the duties payable on entering the goods for warehouse on their withdrawal, in so far as those duties depended upon the appraised value of the goods.

What was intended by the first clause of section 2970 was to reserve to Congress the power to impose new duties upon goods remaining in Government warehouses. The discussion in the case of *United States* vs. *Benson* (2 Clifford, 520), decided in 1865, doubtless induced the enactment of this section in 1866. If the law should be changed affecting the duty of warehoused goods, then it is admitted that a reliquidation must take place; but that is the only significance of section 2970. The language of the last clause of the section only bears out what has already been inferred from the language of sections 2964 and 2931, for between the expiration of one year from the original importation, and until the expiration of three years, the merchandise may be withdrawn for consumption on payment of the *duties assessed on the original entry* and charges and 10 per cent. added.

The original entry herein referred to is, of course, the entry for warehousing, and the duties assessed on the original entry can only be those which were ascertained and liquidated in due course on the entry of the goods for warehouse. It will hardly be contended that the goods to be withdrawn in one year are to have a different liquidation from those which remain for three years in the warehouse. The necessary effect of section 2970 therefore is that the ascertainment and liquidation of duties upon which the withdrawal of goods is to be made, is, that which was made upon the completion of the original entry for warehousing.

Enough has been said to show that the law requires the ascertainment and liquidation of the duties in due course upon the completion of the entry for warehouse. In the case at bar such ascertainment and liquidation was made upon the 20th of August. The terms of section 2931 are express to the point that, to complain of such ascertainment and liquidation, protest must be filed within ten days. It is contended on behalf of the defendant in error that an ascertainment and liquidation must be had on the withdrawal of the goods.

Unless there shall be a reliquidation, such liquidation upon the withdrawal of the goods must be determined by, and agree with, the ascertainment and liquidation in due course on the warehouse entry. A failure then to protest against the liquidation on the warehouse entry within ten days, must deprive a protest filed against the ascertainment of duties on the withdrawal entry, where that ascertainment is the same as the one made on the original warehouse entry, of any force whatever. Were it not so, the provision in the law requiring a protest against the ascertainment and liquidation on goods entered for warehouse would be nugatory. It would be strange legislation which should make the ascertainment and liquidation in case of goods entered for merchandise final and conclusive, and then should require another liquidation when the goods are withdrawn for consumption exactly like it, which might be protested and appealed from.

The necessity for an ascertainment and liquidation of the duties upon the completion of the warehouse entry being established, the necessity for a protest upon that ascertainment and liquidation within ten days thereof follows, and in the absence of such protest any further liquidation upon withdrawal which is not a reliquidation or change of decision by the collector, must itself be final and conclusive, deriving that character from the original unprotested liquidation, and it is not subject to protest at all. It is immaterial, therefore, that the regulations provide for ascertainment of the duties upon the withdrawal of the goods. If so, it is a mere repetition of the original ascertainment and liquidation upon the completion of their entry for warehouse. The truth is that when the liquidation has been completed on the entry for warehouse, and stamped thereon (*Davis* vs. *Miller*, *supra*), any subsequent liquidation, not a reliquidation, is, in effect, a mere checking over of the merchandise and the accounts for the security of the Government.

Great reliance is had by counsel for the plaintiff in error upon the case of *Westray* vs. *United States* (18 Wall., 322). That was a case where the United States sued an importer of rice to recover a difference between the duties estimated and the duties finally assessed upon a cargo of rice. The rice had been entered for warehouse as "uncleaned rice," dutiable at 2 cents per pound, and then had been withdrawn for consumption within the year, before any ascertainment and liquidation of the duties had been had at all, on payment of the estimated duties. The warehouse bond was conditioned for the payment of duties thereafter to be ascertained. The collector, after the withdrawal of the goods, proceeded with the liquidation, and assessed the rice as "cleaned rice," dutiable at 2½ cents per pound.

Suit was then brought on the bond for the difference between the estimated and the liquidated duties. No protest or notice of dissatisfaction by the importer had been filed with the collector before suit brought. The defense made was that the rice was "uncleaned rice" and not "cleaned," as found by the collector; to which the Government replied that the decision of the collector was conclusive, because no protest had been filed; which reply was met by the defendant with the argument that he had had no notice of the liquidation of the duties by the collector.

The question in the case was whether, under section 14 of the act approved June 30, 1864, increasing the duties on imports, which is now embodied in section 2931, notice of the liquidation therein mentioned to the importer was necessary before he should be required to file a protest against the liquidation. That was the only point adjudged in the case, and though the language of the learned justice delivering the opinion covered some others, it is respectfully submitted that the case is an authority only upon the question of the necessity for notice. The language in one particular has already been subjected to criticism in the case of *Davies* vs. *Miller* (130

U. S., 290), where Mr. Justice Gray, speaking for this court, limits the effect of the case to the point above stated, and dissents from the language of Mr. Justice Strong upon the time from which protests can be filed. The language in the opinion in Westray's Case with respect to what is now section 2931 is as follows:

> This act expressly applies to liquidations made when imported articles are entered for warehousing, and to those made when they are entered for consumption. In neither case is there any provision for notice of the decisions or liquidations, and for the obvious reason that such a provision would be superfluous. The importer is instructed by the law at what time the collector or officers of the customs must liquidate the duties. The statute, and the Treasury Regulations established under it, require that the duties must be ascertained whenever an entry is made, whether it be for warehousing or for withdrawal. In practice, it is true, the liquidation at the time of entry for warehousing is little more than an approximate estimate, and it is mainly for the purpose of determining the amount of the bond to be given. It is made and the bond is given before the goods are sent to the warehouse, or even to the appraiser's stores, and before they are weighed, gauged, or measured. But the importer enters them and gives the bond, the amount of which is regulated by the estimated amount of duties. It is due to his inattention, therefore, if he does not know what that estimate is at the time when it is made. Equally true is it that he has ample means of knowledge of the second or corrected liquidation—that made at the time of the withdrawal entry.
>
> One of the conditions of this bond is that he pay the amount of duties to be ascertained under

> the laws then existing or thereafter enacted. He is thus informed that there is to be another liquidation and that the law requires it to be made at the time when he shall make his withdrawal entry and when the duties are required to be paid. There is, then, no reason for requiring a notice to be given to him of the collector's decision. But, if this were not so, it is certain that the statute requires none; and it is not for us to rule that what Congress has declared to be conclusive shall not be so unless something has been done more than the law-makers required.

The construction put upon section 2931, as indicated by the first sentence of the foregoing quotation, is that a liquidation made when the imported articles are entered for warehouse, if it is not to be final and conclusive, must be protested against within ten days therefrom. If the liquidation on the entry for the warehouse contemplated by law is a definite ascertainment of the duties, a failure to protest against it would bar a complaint against any subsequent liquidation which was based on it. But the learned justice treated the original liquidation on the warehouse entry as a mere estimate of duties. It may be here respectfully pointed out that if this gross estimate was the liquidation "in cases of goods entered for merchandise," referred to in section 2931, then the section would be providing for a protest against action by the collector, which could work no harm to the importer, because the payment of duties could never be settled by such a liquidation, and the liquidation consequently could never be conclusive of anything, whether protested against or not. It is contended, with great deference, that it could not have been the intention of Congress to make so purposeless a provision for a protest. The statement in the opinion quoted with which issue is taken is the following:

> In practice, it is true, the liquidation at the time of entry for warehouse is little more than an approximate estimate and it is mainly for the purpose of determining the amount of the bond to be given.

The estimate for the purpose of the bond is provided for in article 598 of the Treasury Regulations of 1874, and in article 434 of the Treasury Regulations of 1857. These articles are authorized by section 2869, and provide only for the making of a gross estimate on which to determine the bond; whereas the ascertainment of the duties referred to in section 2964, "on the due entry thereof for warehousing," are the duties which, under that section, are to be actually paid when the goods are withdrawn upon the order of the owner.

The statement proceeds upon the assumption that the only fixing of the duties on the entry in the case of merchandise entered for warehouse is an estimate for the purpose of determining the bond, while, as has been contended here, there is a definite ascertainment and liquidation of the duties on the warehouse entry provided by law in due course after measurement, full inspection, and appraisement. The remarks of Mr. Justice Strong with reference to this subject were *in arguendo*, and were not necessary to the conclusion reached, as is shown by the language of the learned justice himself, when he says:

> But, if this were not so, it is certain that the statute requires none [no notice], and it is not for us to

rule that what Congress has declared to be conclusive shall not be so unless something shall be done more than the law-makers require.

The argument against the necessity for notice is just as forcible if the importer has knowledge that the ascertainment and liquidation of the duties on goods entered for warehouse will follow in due course their entry for warehouse and their appraisement, as if he is informed that such ascertainment and liquidation will not take place until the withdrawal of the goods. Article 442 of the Treasury Regulations of 1857 (for which see Appendix), which was the section referred to in Westray's Case as showing the provision for an ascertainment of duties on the withdrawal of the goods from warehouse, does make such a provision, but it can only be a repetition of the liquidation had on the warehouse entry.

Section 2970, which shows that the duties to be paid on goods withdrawn from warehouse are the duties which were assessed on the original warehouse entry, had not been passed when the facts arose upon which the decision in Westray's Case was made.

Following the intimation contained in the opinion in Westray's Case, the Treasury Department in 1876 ruled that protests filed within ten days from the withdrawal of merchandise entered for warehouse were within the required time under section 2931. (Treasury Decisions, No. 2809, May 15, 1876.) This decision was reversed, however, on May 2, 1885 (Treasury Decisions, No. 6895, for which see Appendix), on an opinion of the Solicitor of the Treasury (also in the Appendix hereto). Decision No. 6895 has been followed in Treasury decision No. 7982 of January 14, 1887.

It is respectfully submitted that the construction of sections 2931, 2964, and 2970, taken together requires the ascertainment and liquidation of the duties to follow in due course upon the entry of the merchandise for warehouse, and that Treasury regulations which provide for a further ascertainment of duties when the goods are withdrawn do not take away the necessity for filing a notice of dissatisfaction within ten days from the liquidation of duties upon the warehouse entry; that such second ascertainment, if it is a mere repetition of the first, can not be a reliquidation of duties so as to enable the importer by giving notice of dissatisfaction with it to really contest the ascertainment and liquidation made upon the entry for warehouse; that the point was not involved in Westray's Case; that language bearing upon it in the opinion was not necessary to the conclusion reached, and should not now prevent a decision in accordance with the statutes; and that the practice of the Treasury Department has not been continuous in favor of the position sought to be maintained by the defendant in error, that until 1876 the practice was otherwise, and since 1885 it has been in accordance with the views here advanced.

II.

But even if the liquidation against which protest must be filed is that which is made on the withdrawal entry, the ascertainment and liquidation of duties here was made on August 20, sixteen days after the withdrawal of all the sugar with respect to which any contest over the duties has arisen. These facts are the same as in Westray's Case.

There was certainly nothing in the law and nothing in the rules of the Treasury Department in 1880 to require the collector to delay his ascertainment and liquidation of the duties beyond the first withdrawal of goods entered for warehousing. On the contrary, it would seem to be proper to liquidate as soon as possible the duties on those goods withdrawn; nor did the fact that the Government had the security of the other goods which remained make any difference. For the convenience of the importer he was permitted under the Treasury Regulations to withdraw goods from the warehouse on the estimated duties. But the importer, in the view of the law taken in the opinion in Westray's Case, knew that the ascertainment and liquidation of the duties must follow withdrawal, and it was his duty, therefore, to keep himself advised as to the time of such ascertainment and liquidation. The duties were liquidated, and the stamp of liquidation was put upon the entries with the seal of the collector on the 20th of August. Ten days from the affixing of that stamp is, by the decision in *Davies* vs. *Miller* (*supra*), the *terminus ad quem* for the filing of protest. (See, also, Treasury Decisions, No. 9470).

It is claimed by the counsel for the defendant in error that because the withdrawals are made on estimated duties the liquidation can not be said to have taken place until the final withdrawal. In Westray's Case the whole withdrawal was made on estimated duties, but the time for filing the protest was held to be within ten days from the liquidation. The entry for withdrawal of any of the goods is notice to the collector that the duties must be ascertained and liquidated, and even if the importer is not required to keep himself advised of former liquidations on the warehouse entry, it is only reasonable that thereafter he should look for the ascertainment and liquidation. The settlement of accounts and the payment of money on the final withdrawal is not the liquidation, but is merely striking the balance to enable the collector to collect what money remains to be paid.

The very purpose of the act of 1864 was to make the decision of the collector, as evidenced in the final fixing of the duties, the important point in determining the time for protest, and not the delivery of the goods or the payment of the duties. In this view of the case, the defendant in error can derive no aid from Westray's Case. The only authority relied on is a decision of the Treasury Department, No. 5856, in 1883, three years after this case arose, which was reversed, as we have seen, by Treasury decision No. 6895. The delay in filing the protest in 1880, therefore, until after the final withdrawal of the goods, was not in accordance with the practice of the Department at that time, and can not be sustained by a subsequent practice, which was changed in two years.

The defendant in error can not complain that he was misled with reference to the time for protest by any practice of the Department then prevailing. As has been said it was not until 1883 that the ruling was made authorizing the delay in the filing of protests on partial withdrawals until ten days from the final withdrawal. Moreover article No. 361 of the Regulations of 1874 provided as follows:

> The rights of importers in certain cases depend upon protest and appeal within a specified time "after

> the ascertainment and liquidation of duties," and they should be notified of the time at which the duties on their respective entries are ascertained and liquidated.
>
> Collectors will therefore keep a daily record of the entries liquidated, stating the name of the vessel, the place from which, and the time when, she arrived, the name of the importer, and the date of entry; and will give notice of the liquidation of such entries by posting in some conspicuous place in the custom-house, accessible to the public, on the day succeeding the date of ascertainment and liquidation, a transcript of such record, there to remain for ten days, when such transcript will be removed and filed with the records of the office.
>
> The posting of such transcript will be deemed and taken to be a full notice to all parties interested.

It will thus be seen that the duty of the importer upon withdrawing the goods was to observe the posting of the liquidations in the custom-house. The evidence in this case shows that such liquidation was posted on the 20th of August. This was full notice to him.

For the reasons given it is respectfully submitted that the judgment of the court below should be reversed and a judgment rendered for the collector.

WM. H. TAFT,
Solicitor-General.

APPENDIX.

Exhibit A.

Department of Justice,
Office of the Solicitor of the Treasury,
Washington, D. C., April 22d, 1885.

Sir: In a decision of the Treasury Department of August 13, 1883, it was held that when goods were entered for warehouse, a protest made and appeal taken on the final withdrawal of goods under the bond covering any question arising in the settlement of duties under the entry were sufficient to protect the rights of parties under section 2931, R. S.

My opinion is requested as to the correctness of the decision.

The section referred to provides that the decision of the collector as to the rate and amount of duties to be paid on imported merchandise shall be final and conclusive unless within ten days after the ascertainment and liquidation of the duties as well on goods entered on bond as for consumption, notice is given by the importer, setting forth the objections to the decision, and unless within thirty days after such ascertainment and liquidation an appeal shall be taken to the Secretary of the Treasury.

It will thus be seen that the right to protest *must* be exercised within ten days after the decision of the collector as to the rate and amount of duties to be paid whenever that decision is made, whether the goods are entered for consumption or warehouse.

The proceedings to be taken at the custom-house in an entry for warehouse with the exception of the form of the bond, are substantially the same as in an entry for consumption.

In both the entry is in the same form and verified by the oath of the importer.

In both the entry undergoes a preliminary examination in order to arrive at an estimate of the duties due.

In a consumption entry, after estimate of duties, the goods, with the exception of the packages sent to the public store for examination, are delivered to the importer at his request, on his paying the estimated duties and on his executing a bond to return to the collector the goods on demand, within ten days, and not to open the packages delivered, unless in the presence of one of officers of the customs, called the penal bond.

After examination by the appraiser and his return stated in the invoice after the proper returns have been made by the other officers of the customs, and an examination by the collector, the original entry is liquidated by him.

In a warehouse entry the duties are also estimated. Thereupon the goods, with the exception of those sent to the public store, go into warehouse on the importer executing a bond in double the amount of the estimated duties.

When the appraiser has reported the value of the importation, when the weigher, gauger, and measurer have made their returns, the original entry is also liquidated and the duties finally determined, the importer may then withdraw the goods.

He may also withdraw the goods before liquidation of the warehouse entry, on making an entry for consumption, paying the estimated duties and giving the penal bond. In other words, the warehouse entry may be changed into a consumption entry and proceeded with as such to final liquidation. In the course of business adopted by the custom-house, in accordance with the rules of the Treasury Department, the final liquidation of the original entry is made both in a consumption and warehouse entry as soon after the reports of the appraiser and the other officers of customs have been made to the collector as the business of the office will permit.

And the protest, if any made, must be taken within ten days from the liquidation.

The decision of August 13 does not require the importer to file his protest within ten days after the liquidation on a warehouse entry, made as I have pointed out, but allows him to file such protest on a final withdrawal under the bond, and holds that such is the time within the provisions of section 2931.

The mistake in the decision is in regarding a withdrawal of goods as an entry on which the duties are liquidated.

It is not so. There is and can be a liquidation only on the original import entry, whether the entry is for warehouse or consumption, and it is this liquidation only against which the importer can protest.

It is clear from what has been said that in most cases the original import entry has been liquidated and the duties ascertained long before the last withdrawal under the warehouse bond.

Whenever such liquidation is made in the import entry, *the date of it is the time from* which the statute *begins to run, and unless* made within the statute limitation of ten days it is not made in time.

A rule, therefore, which takes no note of the date of such liquidation, but allows generally protests to be filed at date of last withdrawal, is, in my judgment, not in accordance with the statute.

This conclusion seems to be in accord with the opinion of the officers of the customs at the port of New York.

Very respectfully,

A. McCue,
Solicitor of the Treasury.

Hon. Daniel Manning,
Secretary of the Treasury.

EXHIBIT B.

[Treasury decision No. 6895.]

Protests and appeals, time for filing.

TREASURY DEPARTMENT, *May* 2, 1885.

SIR:

* * * * *

This case has led to a re-examination of previous decisions relative to the time within which protests and appeals involving rates of duty on imports may be legally filed.

The opinion of the Solicitor of the Treasury, to whom the matter was referred, is that the ascertainment and liquidation of the duties mentioned in section 2931, Revised Statutes, is the liquidation which takes place on the original import entry, whether such entry be made for warehouse or for consumption, and that whenever such liquidation is made on the import entry, the date of it is the time from which the statute begins to run.

The Department adopts this opinion, but in order not to work unnecessary injustice you are instructed to give public notice of this decision, and that protests and appeals filed in connection with original entries made on and after the 10th instant must be filed in the manner herein prescribed.

Very respectfully,

C. S. FAIRCHILD,
Assistant Secretary.

COLLECTOR OF CUSTOMS,
New York.

EXHIBIT C.

The following is article 142 of the Treasury Regulations of 1857. It appeared first in the Warehouse Regulations of 1855 as:

SECTION III.

Entry for withdrawal from warehouse.

1. The entry for withdrawal of merchandise from warehouse for consumption at port of original importation shall be made by the party in whose name the merchandise was warehoused, or by some person duly authorized for the purpose by him, and in either case, shall be signed by the party making the withdrawal. This entry shall exhibit the marks and numbers of the packages, the description and quantity of the goods, and the dutiable value of the same. On presentation to the proper officer in the collector's office, it shall be compared with the record on the warehouse books of the original warehouse entry, and, if found correct, be properly entered therein, the warehouse bond number endorsed thereon, and the amount of duties payable estimated. From the collector's office it shall then be taken by the importer to the naval office, where a similar comparison shall be made with the warehouse records of that office, and the estimate of duties verified and endorsed upon the duplicate entry. The amount of duties thus ascertained having been paid, a permit will be issued for the delivery of the goods. The entry shall be in the following form, and shall be made in duplicate.

Supreme Court of the United States.

OCTOBER TERM, 1890.

No. 84.

EDWIN A. MERRITT, Collector of the
Port of New York,
Plaintiff in Error,

AGAINST

DONALD CAMERON and DONALD E.
CAMERON,
Defendants in Error.

The defendants in error, the original plaintiffs, imported and entered at the Port of New York certain sugar and molasses in July, 1880.

Said goods were entered for warehouse and the duties thereon were estimated at $11,195.11. Plaintiffs gave a bond in the sum of $23,000, conditioned to be void if, "within one year from the said date of original importation, the said goods, wares and merchandise shall be regularly and lawfully withdrawn from public store or bonded warehouse on payment of the legal duties and charges to which they shall then be subject" (Record, pp. 8, 9).

The Collector, the plaintiff in error, liquidated the duties upon said entry as amounting to $12,157.76.

The plaintiffs, however, before said liquidation withdrew the sugars, on August 4, 1880, paying the estimated duties (thereafter to be ascertained and liquidated), $10,913.55.

Afterwards, September 10, 1880, the plaintiffs withdrew the molasses, paying the duties thereon and an additional sum claimed by the Collector as due upon the sugar withdrawn before the liquidation. Thereupon and within ten days after such withdrawal and final adjustment of amount due on the bond the importers protested against the decision of the Collector as to the rate and amount of duty upon certain of the sugars.

The record further finds (Record, p. 11) that the amount of lawful duties on the said 3·8,964 pounds of sugar, at the rate of one and three-fourth cents per pound, was $8,508.58; that the amount of lawful duties on said 79,736 pounds thereof, at the rate of two cents per pound, was $1,993.40, amounting in the aggregate to the sum of $10,501.98 as the lawful duties on said sugars.

That the excess of duties paid on said sugars August 4, 1880, was $411.56, and interest thereon from the date of payment thereof $135.52, and the excess of duties paid thereon in addition September 10, 1880, $916.71, and the interest thereon from the date of payment thereof $296.05.

Record, p. 11, fol. 30.

The course of business as to this class of entries appears in detail in the record on pages 12 to 14 inclusive.

The Collector, the plaintiff in error, moved the Court to direct a verdict in his behalf on the ground that the protest was not filed as required by Section 2931 of the Revised Statutes. The material part of this Section reads as follows:

" On the entry of any merchandise, the decision of the collector of customs at the port of importation and entry, as to the rate and amount of duties to be paid on such merchandise, and the dutiable costs and charges thereon, shall be final and conclusive against all persons interested therein, unless the owner, importer, consignee, or agent of the merchandise, in the case of duties levied on merchandise, or the costs and charges thereon, shall, within ten days after the ascertainment and liquidation of the duties by the proper officers of the customs, as well in cases of merchandise entered in bond as for consumption, give notice in writing to the collector on each entry, if dissatisfied with his decision, setting forth therein, distinctly and specifically, the grounds of his objection thereto." * * *

This motion was denied and the Court directed a verdict in favor of the plaintiffs.

POINTS.

The protest was in time.

In Westray vs. U. S., 18 Wallace, p. 322, the Court said :

" The statute, and the treasury regulations established under it, require that the duties must be ascertained whenever an entry is made, whether it be for warehousing or for withdrawal. In practice, it is true, the liquidation at the time of entry for warehousing is little more than an approximate estimate, and it is mainly for the purpose of determining the amount of the bond to be given. It is made, and the bond is given, before the goods are sent to the warehouse, or even to the appraisers' stores, and before they are weighed, gauged or measured. But the importer enters them and gives the bond, the amount of which is regulated by the estimated amount of duties. It is due to his inattention, therefore, if he does not know what that estimate is at the time when it is made. Equally true is it that he has ample means of knowledge of the second or corrected liquidation—that made at the time of the withdrawal entry. One of the conditions of his bond is that he pay the amount of duties *to be ascertained* under the laws then existing or thereafter enacted. He is thus informed that there is to be another liquidation, and that the law requires it to be made at the time when he shall make his withdrawal entry and when the duties are required to be paid."

This would seem to be conclusive, and the decisions of the Secretary of the Treasury are in accordance therewith.

Thus, "the appellants, by their attorneys, now claim that their protest and appeal were made within the proper time, and state that the entry was a *withdrawal entry for consumption*, made March 3, 1876, and that on the same day protest and appeal were lodged against your assessment and exaction of duty at the above-mentioned rate. This statement of fact you admit to be correct.

The decision of the Supreme Court of the United States (Westray vs. United States, 18 Wallace, 329) to which the appellants refer in support of their claim that the protest and appeal were in time, seems to set forth the doctrine that the withdrawal entry for consumption of goods entered for warehouse is the liquidation of the entry, which an importer should take notice of for the purpose (if he be dissatisfied with the action of the collector) of protesting and appealing therefrom, under and in pursuance of Section 2931 of the Revised Statutes.

The course thus indicated was pursued by the appellants in this case, and therefore the department, in accordance with such decision, hereby entertains and decides the appeal in question."

Synopsis of Decisions for 1876, No. 2809.

So also, again, in Synopsis of Decisions No. 5856, August 13, 1883, the Secretary says:

"Payment on partial withdrawals are but payments on account, subject to revision on *liquidation of the last withdrawal under bond*, and according to the principle thus adopted it will be regarded by the department as sufficient to protect the rights of parties, under decision

> 2809, and Section 2931, if one protest and appeal shall be filed on the *final withdrawal* under a bond which may cover any question which has arisen in the settlement of duties under said entry. This course will tend to lessen the number of protests and appeals, and thereby lessen the labors of merchants and customs officers."

It will be observed that these decisions are before and after, in point of time, the date of the filing of the protest in question.

In view of the decisions of this Court and of the action of the Treasury Department antecedent and subsequent to the protest of the defendant here, it is submitted that to hold the protest in question to have been improperly filed would work a gross injustice.

In accordance with these views is the decision of the Court in United States vs. Benzon, 2 Clifford, p. 512. In the opinion Justice CLIFFORD says:

> "The better opinion is, that the importation of foreign goods is not complete, as between the importer and the Government, so long as the goods remain in the custody of the officers of the Customs, and that until they are delivered to the importer, whether on shipboard or in warehouse, they are subject to any duties on imports which Congress may see fit to impose. The practice of the Government shows that goods in warehouse or on shipboard have always been regarded as subject to new legislation, both in respect to duties and in respect to alteration in the warehouse laws."

Whatever conclusion the Court might otherwise come to is controlled by the action of the Treasury Department in its contemporaneous construction of Section 2931, as before indicated.

This Court, Justice FIELD delivering the opinion, said:

> "This construction of the department has been followed for many years, without any attempt of Congress to change it, and without any attempt, as far as we are advised, of any other department of the Government to

question its correctness, except in the present instance. The regulation of a department of the Government is not, of course, to control the construction of an Act of Congress when its meaning is plain. But when there has been a long acquiescence in a regulation, and by it rights of parties for many years have been determined and adjusted, it is not to be disregarded without the most cogent and persuasive reasons."

Robertson vs. Downing, 127 U. S., 607, 613.

There is no reason in the nature of the case why this construction of the Department should be overruled.

The objection now interposed is purely technical to enable the Government to retain money received by means of a confessedly erroneous exaction.

In this connection we call attention to the language of the Court in Hahn vs. United States, 107 U. S., 402, 406, in which the Court refer with approval to United States vs. Pugh, 99 U. S., 265, quoting:

"In the case of a doubtful and ambiguous law the contemporaneous construction of those who have been called upon to carry it into effect is entitled to great respect (Edward's Lessee vs. Darby, 12 Wheat., 210), and where this Court refused to interfere with such construction after it had been acted for a long time."

See also

Edwards vs. Darby, 12 Wheat., 206.
United States vs. State Bank of North Carolina, 6 Pet., 29.
United States vs. McDaniel, 7 Pet., 1.
Surgett vs. Lapice, 8 How., 48.
Smythe vs. Fiske, 23 Wall., 374.
United States vs. Moore, 95 U. S., 760.
United States vs. Pugh, 99 U. S., 265.
Swift Co. vs. United States, 105 U. S., 691, 695.
United States vs. Hill, 120 U. S., 169, 182.
United States vs. Philbrick, 120 U. S., 52, 59.
Brown vs. United States, 113 U. S., 568, 571.
See also Burge vs. Smith, 27 N. H., 332.

It is then submitted that the judgment should be affirmed.

The withdrawal entry was an entry within the statute, against which a protest might be filed. Whether so or not, the action of the Treasury Department necessitates such decision in the interest of fairness and justice.

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